IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. CIVIL SPECIAL APPEAL (W) NO.111/2006
The Union of India & Ors.
Vs.
Pratap Singh Rathore

Date of Judgment :: 27 February, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Sanjay Pareek for the appellants.
Shri Sanjeev Prakash Sharma for the respondent.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

REPORTABLE

This special appeal is directed against the order of the learned Single Judge dated 9.8.2005 allowing the writ petition of the respondent. By the order impugned, the learned Single Judge while quashing the decision of the appellant authorities denying the respondent disability pension, directed the appellants to release the disability pension with all consequential benefits in terms of regulation 173A of Army Pension Regulations, 1961 with effect from the date he became entitled to such pension, that is, from the date he was placed in the low medical category CEE (P) and discharged from service.

Facts of the case, briefly stated, are that on 26.6.1966, the respondent was enrolled in the Indian Army. On 9.5.1973 he was discharged under rule 13(3) Item III(V) of the Army Rules. The discharge was

consequent to his being placed in the lower medical category CEE (P) as he was found to be suffering from Varicocele (vericose veins). The respondent applied for disability pension which was denied vide communication dated 28.7.1973 on the ground that the disability was less than 20%, and that it was not attributable to military service. Another attempt to get the disability pension having been rejected on 20.12.1988, the respondent filed S.B. Civil Writ Petition no.175/1995 in this Court which was disposed of with the direction to the authorities to consider the claim afresh. The claim was again rejected on same very grounds on 10.1.1997. The appellant again approached this Court in the connected writ petition i.e. S.B. Civil Writ Petition no.5264/1997 which was allowed in the manner stated above.

Shri Sanjay Pareek appearing for the appellants submitted that the disability pension can be claimed only where the disability is assessed at 20% or more and attributable to or aggravated by military service as provided in regulation 173 of the Army Pension Regulations. In the instant case, the disability of the respondent admittedly being 5%, he was not entitled to disability pension. The learned Single Judge committed error in upholding his claim on the strength of regulation 173A holding that the provisions of regulations 173 and 173A are independent. According to the counsel, regulations 172 and 173 are dependent on each other. As a matter of

fact, regulation 173A is governed by regulation 173 inasmuch as regulation 173A does not mention the extent of disability. On behalf of the respondent, on the other hand, it was submitted that regulation 173A is an independent provision which was inserted by amendment. Counsel referred to the opening words "unless otherwise specifically provided" in regulation 173 and submitted that where the Pension Regulations contain specific provision, regulation 173 can not be applied. Counsel urged that regulation 173 does not cover all types of disability and that is why by amendment regulation 173A was inserted to extend the benefit of the disability pension to cases which are not covered by regulation 173.

In view of the stand which counsel for the respondent finally took, as would appear hereinafter, it is not necessary to go into the question as to whether regulations 173 and 173A are independent provisions or they are to be read together subject to the other. In order to bring home the point, the relevant provisions may be quoted as under :-

> "173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.
>
> The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

173-A. Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note : . . . . . .

183. The disability pension consists of two elements viz. service element and disability element which shall be assessed as under :-

1. **Service element**

(a)	Where the individual has rendered sufficient service to earn a service pension i.e. actual service is 15 years or more (20 years or more in the case of Ncs (E).	(i)	Equal to normal service pension relevant to the length of qualifying service actually rendered, plus a weightage of 5 years as given in Regulation 136 (a) or 146.
(b)	Where the individual has not rendered sufficient service to qualify for a service pension.	(i)	If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority:
		(ii)	The minimum service pension appropriate to his rank (see regulation 180 and group, if any. In all other cases : Equal to the service pension as determined per Regulation 136(a) or 146, but it shall in no case, be less than 2/3rd of the minimum service pension admissible to the rank/pay Group. It shall be further subject to a minimum of Rs.375/- p.m.

Note – . . . . . .

(2) **Disability element**

For 100 per cent disablement the rates of disability element will be as follow :-

Rank	Disability element
Jcos granted Honorary Commission	Rs. P.M.
While on the effective list.	750/-
JCOs	550/-
Other Ranks/NCs(E)	

For lower percentages of disablement down to 20 per cent the rates will be proportionately reduced.

Provided that . . . . . .

In case where an individual is invalidated out of service before completion of his prescribed engagement/service limit on account of a disability which is attributable to or aggravated by military service and is assessed below 20 per cent he will be granted an award equal to service element of disability for the Army Part I (1961), read with Appendix 'A' to AOI I/S/75 and Annexures I & II to AI 3/S/75. This benefit will also be allowed in all cases where an individual is granted disability pension but whose degree of disablement subsequently falls below 20 per cent.

Note– . . . . . .

186. (1) An individual who is invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall, however, continue to draw the service element of disability pension.

Appendix II -

> 4. Invalidating from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no Alternative or Shelter Appointment can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service."

From a combined reading of the above provisions, it would appear that there are two elements of disability pension - service element and disability element. The disability pension is granted where the individual is invalidated out of service on account of disability which is attributable to or aggravated to the military service in non-battle casualty and the same is assessed at 20% or more. Under regulation 173A, individuals placed in lower medical category (other than 'E') permanently and discharged in the circumstances mentioned therein are also "deemed to have been invalidated from service" for the purpose of entitlement rules laid down in Appendix II. Regulation 183 lays down the manner in which the service element and disability element are to be calculated for the purpose of determining the amount of disability pension. Under regulation 186 where individual is invalidated out of service with a

disability attributable to or aggravated by service but the same is assessed less than 20%, he is entitled to only service element of disability pension.

It may be recalled that the learned Single Judge by the impugned order directed the appellants to grant disability pension which as seen above consists of service element as well as disability element.

In course of hearing, Shri Sanjeev Prakash Sharma, learned counsel for the respondent fairly stated that pursuant to the order of the learned Single Judge, the respondent has been allowed pension limited to the service element which comes to 7 years, 2 months and 14 days with which the respondent is satisfied.

An attempt was made on behalf of the appellants to find loopholes in the case of the respondent and it was submitted by Shri Pareek that the disease was not attributable to military service. We do not find an iota of substance in the submission. The respondent as seen above, was enrolled in the Army on 26.6.1966. From the discharge certificate, copy whereof was brought on record by the appellants along with the reply as Annexure R/1/1, it is manifest that the date of origin of the disease was found to be in March 1970. In the summary of case also it was stated that the respondent was an old case of varicocele which started in March 1970.

We are thus satisfied that disease was attributable to the military service. From the description of the disease in Annexure III to Appendix II to the Pension Regulations, it appears that vericose veins is caused by training, march, prolonged standing etc. It is to be noted here that at the time of enrolment, the disease was not noticed, and therefore there can be little doubt that the respondent developed the disease during the military service and it was aggravated by the conditions of service. Reference may be made to rule 7(b) of Appendix II which provides that a disease which has led to an individual discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion hold, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

That being the position, even though the disability was less than 20%, the respondent's case is clearly covered by regulation 186 which states in no uncertain terms that individual invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20% shall be entitled to service element (of disability pension) only. There being no further claim of the respondent

that he is also entitled to the disability element of the pension, we do not think it is necessary to go into the question as to whether regulations 173 and 173A are independent or they are so intertwined as to be governed by the other.

We are thus satisfied that the order of the learned Single does not suffer from any error to warrant interference by the Division Bench. The appeal being devoid of merit is accordingly dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

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